



**Wigan[♥]
Council**

Housing Standards Policy

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1. Policy Statement

The purpose of this Policy is to address the legal responsibilities, policies, principles, and priorities that Wigan Council will adhere to when undertaking enforcement action in relation to private sector housing, empty properties and certain related matters of public health. The Policy aims to provide a clear, informed and coordinated framework demonstrating our approach and processes, which the Council will follow to achieve our ambitions for a high-quality and safe local housing sector. This Policy should be read in conjunction with wider, relevant Council policies and strategies of a related consequence.

2. Introduction and Local Context

Progress with Unity is Wigan Council's new plan to build on the successes and opportunities created during the last 10 years under 'the Deal', but also the lessons we have learned along the way. Progress with unity has two clear missions, these are to:

- Create fair opportunities for all children, families, residents and businesses
- Make all our towns and neighbourhoods flourish for those who live and work in them

To deliver on these missions, Wigan Council commits to creating a home for all. It aims for a borough that provides quality, affordable homes that are right for residents and pledges to improve further the work being done to prevent homelessness and to support people to make a success of their home. To make this ambition a reality, in 2020, Wigan Council published its Housing Strategy, informed by a wealth of local housing and demographic data and wide-ranging sector engagement.

Our Housing Strategy is now being refreshed to strengthen our plans to not only build more of the right homes, but to create better housing options in all parts of the Borough; it equally focuses on the importance of making existing homes right for people and families, ensuring that all of our residents have a healthy, suitable and stable home. In addition, our Housing Strategy also sets out our commitments to making our homes, both new and existing, and communities greener and more environmentally responsible to achieve our ambitious climate objectives.

Wigan is the second largest local authority by population in the Greater Manchester Combined Authority, and the fifth largest in the Northwest. Around 16% of Wigan's household/property tenures are privately rented, which equates to over 22,000 households. Across the country, the private rented sector is only expected to grow. As such, the private rented sector is set to form an increasingly important role in Wigan's housing market and provision. The private rented sector can be a great asset, providing decent homes for a range of people and playing a significant role in housing provision throughout our Borough. Furthermore, the wider private housing sector counted for over 83% of our Borough's households. Overall, the private sector dominates in terms of our local housing provision, and hence it is critical for the Council to ensure that private sector housing is of a high-quality standard for our residents.

We recognise that the majority of our Borough's private sector housing is in good condition, and the market is functioning well, with properties in good condition and well-managed. However, there are pockets of the sector that can be less satisfactory and require intervention. Poor property conditions or management can have wide-ranging effects on health and wellbeing. It can also potentially lead to wider problems such as anti-social behaviour, homelessness and the safety and cohesion of our neighbourhoods and communities, all of which bring down the sector and place additional and avoidable strain on services. We therefore want to support homeowners, landlords, and tenants to know their rights and responsibilities and to make a success of their home, and in doing so, promote wellbeing, stability, and resilience, in a key sector of the housing market. We want to encourage homeowners and landlords to do a good job in maintaining their properties in a good state of repair, whilst at the same time as supporting tenants and helping them to make good choices, and ensure high-quality, safe homes for all.

The Council has the responsibility of addressing any substandard housing that poses significant health and safety risks to its occupants. This Policy will outline the legal powers available to Wigan Council to ensure compliance with housing standards and to intervene in situations where housing conditions are detrimental to health or fail to meet regulatory requirements.

Partnership working is key to the efficiency of this Policy; we will work with colleagues and partners to ensure we fully understand each case, take the best course of action, and make the best use of resources available. This Policy is designed to embrace our Progress with Unity missions and ultimately set forth the Council's understanding of, and approach to, private sector housing standards.

3. Policy Objectives

This Policy sets out when enforcement action will be carried out with the principal objectives to ensure that:

- Tenants of private landlords and registered providers, live in homes which are free of significant risks to their health, wellbeing and safety.
- Privately owned property and land does not present a statutory nuisance to other landowners and does not directly or indirectly present an unacceptable risk to the public health, safety, or the environment.
- The Council meets its statutory duties in relation to hazards within housing in so far as dealing with Hazards recognised under the Housing Health and Safety Rating System (HHSRS) and under the provisions of the Housing Act 2004.
- All Houses in Multiple Occupation (HMOs) are appropriate to be used as an HMO, are safe and well managed, and all relevant Management Regulations are adhered to.
- Licensable HMOs are licensed, and all licensing conditions are met.
- All properties in Wigan borough comply with the legal requirements in relation to smoke and carbon monoxide regulations.
- All privately rented properties in Wigan borough comply with the legal requirements in relation to Electrical Safety Regulations 2020.
- All applicable properties have a valid EPC as per the Energy Performance of Buildings (England and Wales) Regulations 2015.
- All privately rented properties in Wigan borough comply with the legal requirements in relation to Minimum Energy Efficiency Standard Regulations 2018.
- Letting agents and property management agents in Wigan borough are registered with one of three approved Government Ombudsman Schemes.

- Letting agents and landlords handle tenants' money appropriately.

4.Scope and Responsibilities

4.1. Scope

The provisions of this Policy primarily apply to residential properties, i.e. non-commercial properties, within Wigan Council's local authority area, which are part of our local private housing sector. This non-exhaustively includes the private rental sector, owner-occupied dwellings, empty properties, and properties let by Registered Providers of Social Housing.

Not all provisions in this Policy will be applicable to all types of private sector housing. The private housing sector is both nationally and locally the largest housing sector, and there is a great wealth of legislation concerning various aspects of the sector; hence, provisions within this Policy will only apply where appropriate and relevant.

The provisions in this Policy not only apply to or affect residential, private sector housing properties, but also to actors operating in the sector in their capacity as landlord, tenant, owner, occupier, owner-occupier, and else as appropriate. That is, this Policy applies not only to properties in the private housing sector, but also to persons natural and legal.

Furthermore, legislation pertaining to housing standards and enforcement is wide ranging and multifaceted, and often broaches upon other areas of standards, regulation, and enforcement, such as those concerning environmental or public health. The standards and enforcement practices falling within scope of this Policy are those which this Policy explicitly mentions or outlines. However, given the wide-ranging and multifaceted nature of housing standards and enforcement, provisions and principles contained within this Policy may at times be further utilised and applied to areas of private sector housing standards and enforcement which do not explicitly fall within the scope of this Policy but may do so tacitly or by principled extension.

4.2. Responsibilities

Each employee of Wigan Council, most notably those in housing, enforcement, or customer service roles, has a responsibility to adhere to this policy in so far as is appropriate for their role. The Senior Management Team at Wigan Council are responsible for the oversight and execution of the processes and procedures in this policy.

Responsible officers will conduct their duties in line with the following principles, they will:

- Ensure that staff exercising the provisions contained within this policy are appropriately trained and supported by colleagues to apply and deliver the policy professionally and to a high standard;
- Monitor on-going compliance with this policy;
- Endeavour to engage with stakeholders in an efficient and straightforward way, listening and considering a range of views;
- Provide clear information, guidance, advice, and support, to those persons falling under the scope of this policy, helping them to meet their responsibilities, and using simple English as appropriate to ensure accessibility. Wigan has further guidance on the website (<https://www.wigan.gov.uk/Business/Property-and-Land/Private-Landlords/Landlord-support-and-information.aspx>)
- Provide both a robust and transparent approach to regulatory and enforcement activities;
- Comply with any other such practices, procedures, or principles as requires by primary or secondary legislation, or by best practice guidance from the Government, Official Regulators, or established sector stakeholder organisations.

5. Relevant Legislation

There are numerous pieces of both primary and secondary legislation which pertain to the scope of this policy. Given below are the principal pieces of legislation which are pertinent, followed by auxiliary legislation of a related but more limited consequence. The pieces of legislation below are not intended to form an exhaustive list and should be understood in reference also to any associated amending or replacement legislation or Statutory Instruments, Regulations, Bylaws or Orders.

5.1. Principal Legislation

- Housing Acts 1985, 1988, 1996, 2004 & 2006
- Environmental Protection Act, 1990 & 1993
- Landlord and Tenant Acts 1985 & 1987
- Police and Criminal Evidence Act 1984
- Prevention of Damage by Pests Act 1949
- Criminal Procedure and Investigations Act 1996
- Housing & Planning Act 2016

5.2. Auxiliary Legislation

- Anti-Social Behaviour Act 2003
- Anti-Social Behaviour, Crime and Policing Act 2014
- Building Act 1984
- Caravan Sites and Control of Development Act 1960
- Clean Air Acts 1956, 1968 and 1993
- Crime & Disorder Act 1998
- Energy Acts 2011 & 2013
- Homeless Act 2002
- Land Charges Act 1972
- Land Registration Act 1925
- Law of Property Act 1925
- Legislative and Regulatory Reform Act 2006
- Local Government (Miscellaneous Provisions) Acts, 1976 and 1982
- Local Government Act 1972
- Local Government and Housing Act 1989
- Local Land Charges Act 1975
- Noise Act 1996
- Noise and Statutory Nuisance Act 1993
- Protection from Eviction Act 1977
- Public Health (Control of Disease) Act 1984
- Public Health Acts 1936 and 1961
- Regulation of Investigatory Powers Act 2000
- Regulatory Enforcement and Sanctions Act 2008
- Tenant Fees Act 2019
- Town and Country Planning Act 1990

6. What is Enforcement?

Enforcement means any action which is undertaken in the exercise of, or against the background of, statutory enforcement powers. Enforcement is hence a wide-ranging category which includes formal actions such as prosecution, the imposition of fixed, financial and civil penalty notices or the service of other such legal notices, applications for rent repayment orders, and many more. It also includes wider actions such as inspections, investigations, or information gathering related to property or land, and any relevant person, where the purpose is checking compliance with legislation, or to provide advice and guidance on how to comply with legal obligations.

7. The Housing Health and Safety Rating System (HHSRS)

The Housing Health and Safety Rating System (HHSRS) was introduced by the Housing Act 2004 and remains the principal system of assessing and enforcing housing standards in England.

The HHSRS provides local authorities with a risk-based assessment tool, which is used to assess the risk, or the likelihood and severity, of a hazard, actual or potential, in residential housing, to the health and safety of the occupants. The HHSRS is tenure neutral in that it is used to assess hazards in both private and social rented housing, and also in owner-occupied housing.

The HHSRS is not a pass/fail test; rather, it provides a risk-based assessment matrix which provides a score for the property in terms of its conditions.

A HHSRS score is calculated following an inspection by an authorised council officer. The formal HHSRS scoring system aids in demonstrating the seriousness of present or potential hazards that can cause harm within dwellings and is prescribed by the Housing Health and Safety Rating System (England) Regulations 2005, along with supplementary operating guidance as provided by the Government.

There are at least 29 potential hazards which are assessed and scored for their severity and risk to health and safety. The scores for each are ranked in bands. There are two categories of possible hazards which are then identified from the bands:

- **Category 1 Hazards:** (bands A-C) represent a serious danger to health and the Council has a duty to take appropriate action to deal with these.
- **Category 2 Hazards:** (bands D-J) represent less danger and the Council has the power, but no duty, to reduce category 2 hazards through appropriate action.

A range of enforcement powers are available to the Council to remove or reduce any hazards identified to an acceptable level. Where an authorised Council officer believes that an identified risk to the health and safety of occupants should be dealt with, they will utilise these various powers at the Council's disposal to ensure that property owners and landlord take the appropriate corrective measures.

In most cases, the Council will generally follow a process in which it will seek to work with landlord or owner to reduce or remove hazards.

However, this may not be appropriate in all cases, such as when there is an imminent risk of serious harm to the health or safety of occupants. Therefore, each case will be risk-assessed on its own merits to determine the appropriate course of enforcement action.

Given that hazards are scored on the basis of risk to the potential occupant who is most vulnerable to that specific hazard, in determining what action to take, the Council will take account of the hazard assessment score. It may also consider whether the Council has a duty to take action or discretion to act; the views of the occupiers; the risk to the current and likely future occupiers and regular visitors; and the presence of other significant hazards in the property.

8. Our Approach to Enforcement

8.1. The Principles of Enforcement

In accordance with section 21 of the Legislative and Regulatory Reform Act 2006, Wigan Council will carry out enforcement-related activities in line with the following principles:

- **Proportionate** – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
- **Consistent** – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities, without fettering our discretion.
- **Targeted** – we will primarily focus our resources on higher-risk activities, reflecting local needs and national priorities.
- **Transparent** – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.
- **Accountable** – our activities will be open to public scrutiny with clear and accessible policies and fair and efficient complaint procedures.

Furthermore, all enforcement actions, policies, and guidance, will be undertaken with regards to the principles and directions specified in the Regulator's Code, alongside any future guidance, made under sections 22 and 23 of the same Act. Under the Regulator's Code, local authorities must base their regulatory activities on risk and ensure that they take an evidence-led approach in determining priority risks in their local authority area. Therefore, ensuring those resources are allocated where they would be most effective in promoting positive change.

8.2. Our Approach

The form of enforcement activity undertaken will vary according to the legislation applicable to the given case. In some instances, specific enforcement actions may be mandated by statute, provided certain criteria are met. In other cases, officers may have a broader scope for discretion as to the utilisation of both formal and informal enforcement mechanisms available.

Cases, breaches, and complaints will be evaluated on their own facts, and the Council's approach to each case, whilst following the prescribed general process guidelines, will be largely evidence-led. When considering an approach and response to cases of harassment and unlawful eviction, professional discretion is always available for exercise by the Council, as not all actions nor methods of enforcement may be deemed appropriate given the case at hand.

Generally, in the first instance, we will try to seek to resolve matters informally where this is appropriate; offering advice, support, guidance, and mediation to reach a swift and satisfactory solution without the need for escalation of the issue or complaint.

Where this type of engagement fails to achieve the necessary result, or there is a failure to comply of a sufficiently serious magnitude, officers will use the full range of enforcement options available to them under the relevant legislation to achieve the required results or level of compliance to protect those at risk. For contraventions the Council deems serious, possible action will include prosecution.

The type of enforcement action(s) pursued is always considered on a case-by-case basis, based on the individual particulars of the given case.

Following consideration of the specific circumstances of a case, the most appropriate enforcement option(s) in the Council's opinion will be applied accordingly. In each case, enforcement seeks to:

- Educate, promote and achieve sustained compliance with the law.
- Ensure that landlords take action to deal immediately with serious risks.
- Ensure that landlords who breach legislative requirements are held to account.

Any actions taken by the Council are so taken with the reasonable expectation of the cooperation of the resident(s) affected throughout the process, where appropriate. Residents should also be aware that our investigations into complaints may also ordinarily involve looking at the conduct and possible motivations of any residents involved, including tenants, occupiers, and neighbours.

At all times throughout the process, officers undertaking enforcement activities will be mindful of wider factors and support needs which may be a contributory factor to investigated complaints. Where identified, officers will endeavour to refer and engage with other agencies and stakeholders, gaining permission to do so where necessary. Examples non-exhaustively include where additional support or advice may be required with regard to activities such as hoarding, anti-social behaviour, or harassment by a landlord.

8.3. Identifying the Need for Action

Wigan Council will aim to take a balanced approach in the identification and investigation of the need to take enforcement action and thereby aim to successfully manage the private housing sector, by both reactive and proactive engagement; reactively responding to issues as and when they arise and proactively looking to intervene before potential issues arise or worsen.

Reactive engagement involves, non-exclusively, activity undertaken in response to received complaints, requests for assistance, or other such contact received indicating a need for Council assistance. Proactive engagement involves, non-exclusively, the proactive inspection of dwellings, targeted action, licensing, multi-agency and partnership working, and stakeholder engagement.

Such a balanced approach means that Wigan Council can help to ensure adequate resources are available to reactively deal with ad-hoc issues as they arise and so remain abreast of the sector overall, while proactive engagement will help to support and identify potentially vulnerable residents, who may be private tenants afraid to raise issues or unaware of their rights, or owner-occupiers who are in need of additional support. It will also aid in the early identification of possible concerns or breaches before they develop into more serious problems.

Furthermore, the long-term aim of shifting from reactive enforcement to proactive management is a key factor in changing the behaviours of agents in the sector, such as landlords, incentivising good agents whilst targeting resources at combating rogue agents.

Where we consider it appropriate to inspect premises to determine whether a hazard or other such compliance issue within scope exists, we have a duty to do so.

All issues encountered during inspections, incidents, and complaints reported to us will be thoroughly assessed and, where appropriate, investigated before any decisions are taken in respect of enforcement action.

8.4. Powers of Entry

In certain circumstances, Powers of Entry into a property are provided to authorised officers in accordance with legislation under which the Council operates. In general, these powers will allow an officer at any reasonable time to:

- Enter a property to carry out an inspection or gather evidence.
- Take another person with them to carry out the function which they are there for.
- Take equipment or materials with them.
- Take measurements, photograph or make recordings.
- Leave recording equipment on the premises for later collection.
- Take samples of any substances or articles found on the premises.
- In some cases, carry out works.
- Where necessary to protect the health and safety of any person, or to protect the environment without delay.

Generally, these powers will be used where they are deemed necessary in order to:

- Carry out a statutory duty or power.
- Investigate an offence.
- Prevent obstruction of officers.

In most cases, notice of entry must, and will, be given to owners and occupiers. The notice period applicable is dependent upon the provisions of the given legislation being enforced but is usually a minimum of 24 hours' notice. Notice will usually be given in writing, by letter or email, but may, in some circumstances, be given verbally, dependent upon the relevant statutory or regulatory provision.

There may be circumstances in which entry without notice is permitted and utilised, for example, to investigate whether a property is an unlicensed HMO or an otherwise unlicensed property.

9. Enforcement Options and Powers

This section outlines the types of enforcement options and powers more commonly applied or considered by Wigan Council for activity falling within the scope of this Policy. However, it is not an exhaustive list of the enforcement actions available to the Council, or which may be considered by the Council, and is furthermore not intended as a full statement of the law, nor intended to be an authoritative interpretation of the legislation, and readers must not rely on it as an authoritative source. Where there are any doubts about the interpretation of the legislation, readers are strongly advised to seek their own independent legal advice

9.1. Informal Enforcement Activity

(i) **No Action**

In certain circumstances, it may be most appropriate for the Council to take no, or minimal, action in regard to an alleged housing standards issue raised. This may be when the impact on the occupier, or wider neighbourhood, is negligible or of limited consequence, or where claim of a breach of obligations is unsubstantiated.

(ii) **Advice, Guidance, and Mediation**

Officers dealing with issues raised should endeavour to offer quality, up-to-date, relevant advice and support, based on the latest guidance or legislation, and help residents with concerns to solve the issue using an asset-based approach.

(iii) **Verbal or Written Warning**

The Council uses compliance advice, guidance, and support as a first response for many cases of identified breaches of legislation. This advice or support may sometimes be provided in the form of a warning letter from the Council to assist individuals, businesses, and other organisations in having breaches rectified as quickly and efficiently as possible, avoiding the need for progression to further enforcement action.

(iv) **Indirect Action**

Where appropriate, the Council will refer cases to other agencies, authorities, or Council departments, for further action or support, for example, the Fire Authority, Local Authority Planning Enforcement, or the Police.

(v) **Promoting Good Landlord Standards**

A key strategic objective for Wigan Council in delivering its housing ambitions is to promote a high-quality, sustainable, and well-functioning private rental sector. The **Housing Strategy, Regulation & Improvement team** undertakes regular engagement with sector stakeholders to build positive relationships in the sector and provide invaluable support and advice, alongside offering incentive schemes, to help achieve this aim and drive-up standards.

(vi) **Leasehold Contract Disputes**

For disputes of this nature, the Council will promote resolution through civil litigation rather than use statutory enforcement as a first resort.

Leaseholders will be advised of the services, including informal dispute resolution services, offered by The Leasehold Advisory Service (LEASE), a government funded body providing independent advice for residential leaseholders and park home residents.

9.2. Formal Cautioning

Wigan Council has the power to issue simple cautions for certain offences where the perpetrator admits to the offence and consents to the simple caution. This may be used as an alternative to prosecution where the offence is less severe or the public interest in prosecution is limited. Where a simple caution is offered and declined, we are likely to proceed to prosecution..

9.3. Prosecution

We may decide to prosecute in respect of serious or recurrent breaches or offences, or where other enforcement action, such as statutory notices have failed to secure the required compliance.

When deciding whether to undertake proceedings, Wigan Council will follow the Crown Prosecution Service's Code for Crown Prosecutors (hereafter 'the Code') as a guiding framework in the decision and assessment of which cases are to be progressed or pursued.

The Code is issued by the Director of Public Prosecutions and prescribes the general principles Crown Prosecutors ought to follow when evaluating the merits of cases.

There are two standards a case must meet in order for it to be considered viable under the Code. These are the evidential test, and the public interest test.

The evidential test requires that prosecutors must be “satisfied that there is sufficient evidence to provide a realistic prospect of conviction”. The Code provides various considerations which ought to be taken when assessing the sufficiency of the evidence gathered. These considerations will be undertaken by Wigan Council during any individual investigation into alleged offences.

The public interest test assesses whether a prosecution is required in the public interest. It involves evaluating whether or not, for the case under consideration, the factors against prosecution outweigh those in favour. The Code provides various considerations which ought to be taken when evaluating the public interest in prosecuting, or not prosecuting, a given case. These considerations will be undertaken by Wigan Council during any individual investigation it undertakes. (see CPS ‘Code’ <https://www.cps.gov.uk/publication/code-crown-prosecutors>).

Any decisions by Wigan Council to prosecute are based on the particulars of the case concerned. Given the standards necessary for proceedings to be considered, any decision to, or not to prosecute, is liable to change when relevant and new evidence, circumstances, or factors arise.

9.4. Statutory Notices and Orders

(i) Banning Orders (BOs)

Banning Orders, made by the First-tier Tribunal (Property Chamber) following a successful application from a local authority, prohibit a person from the following activities (England only):

- Letting/Renting-out residential housing or accommodation
- Engaging in letting agency work
- Engaging in property management work.
- Provisions may also be included to prohibit the person from being involved (directly or indirectly) in any body corporate, i.e. business or other organisation, which engages in the same activities.

A banning order also prohibits a person from holding an HMO licence or a licence granted under a selective licensing scheme, and any such license held must be revoked by the local authority once a Banning Order is issued.

A Banning Order must last for a minimum of 12 months and there is no statutory upper time limit.

Banning Orders may contain certain exceptions to a ban for some, or all, of the period to which the ban relates, for example, to deal with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end, or to allow letting agents sufficient time to wind down their business.

A Banning Order may be made against a landlord or agent who has been convicted of a Banning Order Offence. These are set out in regulation 3 of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 SI 2018/216 as over 40 separate offences, and include:

- Failure to comply with an Improvement Notice or Prohibition Order (under the Housing Act 2004, s.30 and s.32, respectively).
- Breach of gas safety regulations (under Health and Safety at Work etc Act 1974, s.33).
- Unlawful eviction or harassment (under Protection from Eviction Act 1977, s.1).
- Having control of, or managing, an unlicensed HMO or other property, or breaching a condition of a licence (under Housing Act 2004, s.72 [as amended by para 3 Sch. 9 Housing and Planning Act 2016] and s.95 [as amended by para 4 Sch. 9 Housing and Planning Act 2016], respectively).
- Failure to comply with HMO management regulations (under Housing Act 2004, s.234).
- Failure to comply with overcrowding notices or fire safety regulations (HMOs only) (under s.139 Housing Act 2004 and Art.32 Regulatory Reform (Fire Safety) Order 2005, respectively).
- Breach of right to rent provisions (criminal prosecutions only) (under ss.33A and 33B Immigration Act 2014 [as amended by s.39 Immigration Act 2016]).
- Using or threatening violence for securing entry into premises (under Criminal Law Act 1977, s.6)

Further offences are set out in the regulations, which do not directly relate to housing, such as fraud, misuse of drugs, theft, stalking, and sexual assault.

To obtain a Banning Order, the local authority must first serve a notice on the landlord or agent within 6 months of the conviction for the Banning Order offence, stating:

- The reasons a Banning Order is being sought.
- The length of the Order being applied for.
- That the person has at least 28 days to make representations in their defence.

After considering any representations the authority must apply to a First-tier Tribunal (Property Chamber).

Sanctions for breaching a banning order include:

- Prosecution by the local authority (using powers provided by s.222 Local Government Act 1972) or the police, with summary conviction potentially resulting in imprisonment for a period not exceeding 51 weeks, or a fine, or both.
- Imposition of a Civil Penalty by the local authority up to £30,000 as an alternative to prosecution.
- Application by the local authority for a management order, in respect of a HMO, to protect the health, safety or welfare of residents.

Furthermore, a local housing authority may require a person to provide specified information for the purpose of enabling the authority to decide whether to apply for a banning order against the person, and it is an offence for the person to fail to comply with such a requirement (unless there is a reasonable excuse) or to knowingly provide false or misleading information. A person who commits such an offence is liable on summary conviction to a fine.

(ii) **Compulsory Purchase Orders (CPOs)**

Compulsory Purchase Orders enable the local authority to acquire property and land without the agreement of the owner or occupier in order to carry out a function deemed to be in the public interest.

Various statutes provide enabling powers for compulsory purchase, each specifying the bodies that are acquiring authorities for the purposes of the power and the purposes for which the land can be acquired. Local authorities can use a CPO to facilitate the carrying out of development, redevelopment or improvement of land where it will promote or improve the economic, social or environmental well-being of an area. CPOs can also be used to clear unfit housing, bring empty properties back into use, develop or regenerate an area or construct local road schemes.

(iii) **Emergency Action**

A local authority has discretionary powers to undertake Emergency Remedial Action or make an Emergency Prohibition Order.

These may be made where there is:

- A Category 1 hazard (HHSRS).
- An imminent risk of serious harm to the health or safety of an occupier.
- No current Management Order in force (usually in relation to an HMO).

Emergency Remedial Action enables the local authority to take action in relation to any premises in relation to which remedial action could be required to be taken by the issuing of an Improvement Notice and subsequently recover the costs of doing so.

When intending to undertake Emergency Remedial Action, the local authority is required, within 7 days of starting to take the action, to serve a notice of their intention on the person(s) on whom the local authority would be required to serve an Improvement Notice. Such a Notice must state:

- The nature of the hazard and the residential premises on which it exists.
- The deficiency giving rise to the hazard.
- The premises in relation to which emergency remedial action has been or is to be taken, and the nature of the action.
- The power under which the remedial action was or is to be taken.
- The date when the action was or is to be started.
- Information about the right to appeal.

The owner of a property will be able to appeal and must do so within 28 days of the date Emergency Remedial Action is to be started to the First-tier Tribunal (Property Chamber). However, any appeal will not prevent the action from being taken.

Similarly, for Emergency Prohibition Orders. A local authority may enter the premises at any time to make such an Order, prohibiting the use of all or any part of the premises with immediate effect.

The order must specify:

- The nature of the hazard and the residential premises on which it exists.
- The premises in relation to which prohibitions are imposed.
- Any remedial action which would result in the order being revoked.
- Information about the right to appeal.

An Emergency Prohibition Order is served on the day it is made. The local authority is responsible for determining whether subsequent action taken by the owner gives grounds to revoke or vary the order. Once issued, an Emergency Prohibition Order can be reviewed, varied or revoked in the same way as ordinary Prohibition Orders.

(iv) **Empty Dwelling Management Orders (EDMOs)**

Empty Dwelling Management Orders enable local authorities to take over the management of certain residential premises which have been empty for at least two years. This enables the local authority to bring private, empty dwelling stock back into occupation.

EDMOs may be initially interim or final. Interim EDMOs allow a local authority to take over management and proceed to let out the property without the owner's consent to do so. They normally last for 12 months. Where the owner will not prove their consent to the local authority to let the property, an Interim EDMO may be revoked and replaced by a Final EDMO, under which the local authority does not require any such consent in order to let the property. Final EDMOs remain in force for a fixed period of no more than 7 years.

To obtain an EDMO, the local authority must successfully apply to the First-tier Tribunal (Property Chamber) to authorise the Order. Before the local authority may apply to the Tribunal, it must make reasonable efforts to serve notice on the owner.

Failure to locate the owner after reasonable efforts does not preclude the making of an application to the Tribunal.

Before making an application to the Tribunal, the local authority must give due consideration and take account of the rights of the owner, balanced against the interests of the wider community. It should consider both the benefits of obtaining an EDMO, such as the potential for crime and anti-social behaviour reduction, improvements to quality of life, and improvements to the area, including its value, and the costs of making the property fit for occupation and of ongoing maintenance. On the other hand, the local authority should consider whether interference with the owner's right to quiet enjoyment of the property by making an EDMO is proportionate to the benefits to be obtained.

(v) **Improvement Notices and Remedial Action**

An Improvement Notice requires the person on whom it is served to carry out remedial action to reduce or remove any identified hazard(s) with a given timeframe. Improvement Notices may apply to a whole dwelling, including common areas. For Improvement Notices served in relation to Category 1 hazards (HHSRS), remedial action must at least ensure that the hazard ceases to be a Category 1 hazard, though the Improvement Notice will often require more than this minimal action. An improvement notice is secured as a local land charge.

Improvement Notices, once served, may come into effect no earlier than 21 days after the date of issue. After being served on the person required to remedy a hazard, an Improvement Notice must then, within 7 days, be also served on the occupier of the dwelling (if different) and on anyone whom the local authority knows to have a relevant interest in the dwelling.

Any Improvement Notice must specify whether it has been made in order to deal with Category 1 or 2 hazards (under HHSRS), the issues at the property giving rise to the hazard(s), the nature of the hazard(s), what remedial actions are required, and the dates when remedial action is to be started and completed. At least 28 days' notice must be provided for a start date for undertaking remedial action.

Failure to comply with an Improvement Notice without a reasonable excuse is an offence and one or more of the following actions may then be taken by the local authority:

May do the required work and charge the costs back.

- Prosecute.
- Impose a Civil Penalty as an alternative to Prosecution up to £30,000 (where the relevant offence is committed by a company, the sum of the Civil Penalties issued against the company, and its director can exceed the £30,000 cap).
- Apply for a Rent Payment Order or Banning Order

The local authority may agree to suspend the improvement notice if it believes it is safe to postpone the work.

(vi) **Prohibition Orders (POs)**

Prohibition Orders are used to restrict or prevent the use of residential premises where a hazard has been identified under the Housing Health and Safety Rating System (HHSRS). A prohibition order may apply to the whole of a dwelling, part of it, or to common parts of a building, depending on the nature and severity of the hazard.

There are three main types of prohibition orders: standard, suspended, and emergency. Emergency prohibition orders are referenced within (iii) Emergency Actions. A standard prohibition order may be issued when a Category 1 and/or 2 hazard is present and no management order is in place. The order will specify the nature of the hazard, the part of the premises affected, and the type of use that is prohibited—such as occupation by a certain number of people or by specific groups. A standard prohibition order comes into effect 28 days after service subject to appeal.

A suspended prohibition order allows the authority to delay the operation of the order until a specified event occurs, or a condition is met. This might include a change in occupancy or a breach of an undertaking.

All prohibition orders must include certain key elements: a clear statement of the legal basis for the order (i.e. under which section of the Act it is made), a description of the hazard and the deficiency causing it, the premises or part of the premises to which the order applies, and the specific prohibitions being imposed. The order must also outline any remedial actions that, if taken, could lead to the revocation of the order. Additionally, it must inform the recipient of their right to appeal to the First-tier Tribunal (Property Chamber) and the timeframe within which such an appeal must be made.

The Housing Act 2004 also provides for the variation and revocation of a prohibition orders if circumstances change, such as the hazard being removed. Failure to comply with a prohibition order is a criminal offence and may lead to further enforcement action, including prosecution or the use of powers to take possession of the property.

A Prohibition Order prevents the use of residential premises (or parts of), including HMOs, for all or any specified purpose and may extend to common areas of properties if applicable. Prohibition Orders may also specify the maximum number of people that may occupy the dwelling or restrict the type of people allowed to live there. Prohibition Orders require an immediate cessation of the unsafe activities identified, giving rise to health and safety risks.

(vii) **Rent Repayment Orders (RROs)**

The granting of an RRO by the First-tier Tribunal (Property Chamber) following successful application by a local authority requires a landlord or agent who has committed a liable offence, to repay rent, Housing Benefit, or housing costs of Universal Credit, originally paid with regards to a given tenancy or licence. An RRO can require the repayment of a sum of up to a maximum of 12 months' rent. Local Authorities are also empowered to help occupiers apply for an RRO, for example by conducting proceedings on their behalf or through advice on how to do it.

It is not necessary for the landlord or agent to have been convicted of an offence for an RRO to be granted as long as the Tribunal (Property Chamber) is satisfied beyond all reasonable doubt that a liable offence has been committed.

Liable offences which can result in an RRO include:

- Failure to comply with an Improvement Notice or Prohibition Order
- Breach of Banning Order.
- Having control of, or managing, an unlicensed HMO or other property, or breaching a condition of a licence.
- Illegal eviction or harassment.
- Using or threatening violence for securing entry into premises.

HMO licenses cannot be transferred from one person to another, so a landlord who acquires a tenanted property which requires a licence cannot use an existing licence in place, they must apply for a new one, and they commit an offence if they do not.

Where the tenant's immediate landlord is an intermediate landlord, a Rent Repayment Order can only be made against that landlord. It cannot be made against the superior landlord.

To obtain an RRO, the local authority must first serve a notice on the landlord or agent within 6 months of the conviction for the Banning Order offence, stating:

- The reasons a Banning Order is being sought;
- The amount being sought for repayment (not exceeding the amount of Housing Benefit or Universal Credit paid (directly or indirectly) to the landlord or agent in the relevant period).;
- State the period (of maximum 12 months) of the landlord/agent committing the offence which the RRO is for.
- That the person has at least 28 days to make representations in their defence.

After considering any representations the authority must apply to a First-tier Tribunal (Property Chamber). Application and hearing fees may apply but may be recoverable upon successful granting of an RRO.

In certain instances, a local authority must consider applying for an RRO. This applied where a landlord has been convicted of an offence which either was first committed on or after 6th April 2017 or is a licensing offence first committed before that date and continuing after 5th April 2018.

9.5. Licensing

(i) Houses in Multiple Occupation (HMOs)

Under legislation all properties that are occupied by five or more people, from two or more households, and sharing an amenity, will be subject to mandatory HMO licensing, irrespective of the number of storeys they contain. This means that such HMOs must be licensed by Wigan Council, and the granting of HMO licences is subject to receipt of the required information and eligible application. Further guidance on HMO licensing is available on our website, including details of licence fees and charges.

All HMOs inspected will be assessed in accordance with the Council's approved standards and HMO Management regulations for HMOs. These standards are available on the Council's website.

The Council will seek to identify all HMOs in the Borough and will, in the first instance, assess each property under its approved risk assessment process and identify those that require a licence. It will endeavour to re-assess properties at least once every five years and owners, agents and occupiers will be encouraged to assess their own houses and to agree to carry out phased improvements.

The Council will endeavour to ensure that owners are fully aware of their responsibilities and do not unnecessarily expose themselves to enforcement action through lack of understanding or information. Properties inspected which fail to meet the relevant standards or licence conditions will be subject to appropriate enforcement action to remedy all deficiencies.

The Council will offer different lengths of HMO licenses based on the following non-exhaustive list:

- For landlords with a good history and commitment to maintaining high standards, a five-year licence will be granted.
- If there are some concerns about management or property conditions, a lack of compliance, or if we've had to intervene in the past (though not severe enough to refuse a license), we may issue licenses for one to three years. After this period, a new application and renewal fee will be necessary.

- For landlords new to HMO management in our borough, we provide a trial period by granting a one-year license initially, which will be extended after the first 12 months at no extra cost, subject to demonstrated compliance and a property inspection. This allows us to assess their management capabilities effectively.
- For landlords of properties which have been unlicensed during a period when they should have been licensed, a one-year licence will be granted. After this period, a new application and fee will be necessary based on the above criteria.

In all cases of a licence shorter than 5 years being granted, the reasons and justifications for this decision will be communicated in writing.

To reflect the complex nature of B&B type properties and due to the high turnover and the way that B&B properties are occupied, licences will be granted for the maximum of two years to ensure that adequate measures are in place to manage these properties. Where there has been intervention or a history of non-compliance a one-year licence may be issued.

The Council will endeavour to inspect all licensed HMOs at least once during the licence period for that property. Properties inspected which fail to meet the relevant standards or licence conditions will be subject to appropriate enforcement action to remedy all deficiencies.

The Council has a zero-tolerance approach concerning the mandatory licensing of HMOs. It is a criminal offence to operate an HMO without a licence, and a landlord will also commit a criminal offence if they fail to comply with any of the conditions of their licence.

Where the Council becomes aware of a licensable HMO that is being operated without a licence it will normally take formal enforcement action, such as issuing a civil penalty notice or prosecution. In these circumstances the Council will issue a 1-year licence. In line with legislation, the Council can refuse to issue, to vary or revoke an HMO licence. In all cases of a licence shorter than 5 years being granted, the reasons and justifications for this decision will be communicated in writing.

The Council also has powers, under Part 2 of the Housing Act 2004 to implement an additional licensing scheme for HMO above the national mandatory licensing scheme. Any such additional scheme will be outlined and published as its own separate policy, with the provisions of this policy by default applying also to additional licensing schemes, unless stated otherwise.

Wigan Council may also have in place an article 4 Directive which may remove permitted development rights for changes of use from individual dwelling houses to small houses in multiple occupation (HMOs). This does not mean that HMOs will no longer be allowed in affected areas, it simply means that, regardless of size, they will require planning permission, and changes of use from dwellings to small HMOs outside of affected areas will remain as permitted development and will not require planning permission.

(ii) Selective and Additional Licensing Schemes

Local authorities are provided with discretionary powers to designate one or more areas of the borough as subject to a Selective Licensing scheme.

Where a Selective Licensing designation is made, it applies to all privately rented properties in the area, subject to certain exemptions, excluding HMOs which require licensing, Mandatory and Additional. This means that all privately rented properties before they can be let will require a license granted by Wigan Council.

The aim of Selective Licensing is ultimately to drive-up standards in a localised area. Where an area has a high proportion of private rented properties and is subject to significant levels of either low housing demand, anti-social behaviour, poor property conditions, migration, deprivation, or crime, the imposition of Selective Licensing aims to help the Council to combat the issues being faced and ensure the area is better managed, and a safe, secure, quality place to live.

A license would be required for each privately rented dwelling in the designated area, and license holders would need to be deemed a fit and proper person to hold such a licence, with satisfactory management arrangements in place.

Under Selective Licensing, there are mandatory conditions which are attached to each licence:

- the production of a gas safety certificate (if applicable)
- electrical appliances and furniture are kept in a safe condition
- installation of smoke alarms in proper working order
- tenants or occupiers must be supplied with a written statement of the terms of their occupancy by the licence holder
- a requirement that the licence holder obtains references for potential occupiers
- other conditions imposed by regulations, for example the provision of Energy Performance Certificates

The Council may also attach certain discretionary conditions to the licence, including restrictions or prohibitions on the use or occupation of particular parts of the property, requiring landlords to take reasonable steps to prevent anti-social behaviour, and requiring landlords to attend a training course in tenancy management.

It is a criminal offence for a person without a licence to manage or have control of a property subject to a Selective Licensing designation. The offence is punishable on conviction by the courts to an unlimited fine. A Civil Penalty may also be imposed as an alternative to prosecution.

The Council has a zero-tolerance approach concerning the licensing of properties. It is a criminal offence to operate a property without the required licence, and a landlord will also commit a criminal offence if they fail to comply with any of the conditions of their licence. The introduction of Selective Licensing needs to carefully consider the impact on the private rented market, and assess the risk of landlords exiting the marketing, a reduction in a much-needed supply of housing and the staffing capacity required to effectively enforce it.

Where Wigan Council believes that a Selective Licensing designation is warranted and required, it may seek to apply for such a designation. Any such Selective Licensing scheme implemented by Wigan Council will be outlined and published as its own separate policy, with the provisions of this policy by default applying also to Selective Licensing schemes, unless stated otherwise.

9.6. Civil Penalties and Other Financial Penalty Notices and Charges

Civil Penalties are a financial penalty imposed by a local authority on an individual or organisation. They are an alternative to prosecution which may be considered for certain housing-related offences.

Wigan Council have a separate policy relating to Civil Penalties under the Housing and Planning Act 2016 and The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, which is contained as Appendix A of this policy.

More specifically, Civil Penalties may be used as an alternative to prosecution for the following offences:

- Failure to comply with an Improvement Notice.
- Offences in relation to licensing of Houses in Multiple Occupation.
- Offences in relation to licensing of houses.
- Offences of contravention of an overcrowding notice.
- Failure to comply with management regulations in respect of Houses in Multiple Occupation.

- Breach of a Banning Order.
- Breaches of electrical safety regulations.

Only one penalty can be imposed in respect of the same offence, and one may not be imposed for an offence which has been, or currently undergoing, prosecution. The same criminal standard of proof is required for a civil penalty as for prosecution.

Wigan Council may invoke enforcement measures, using powers provided to local authorities under legislation, to undertake works to a property in the event the owner expresses no interest in bringing the property back into use or up to a required standard. Where the Council carries out such works in default, it is often able to recover the costs through Enforced Sale.

Once works in default are completed, some statutes enable the local authority to secure repayment of the costs of the work as a local land charge registered against the property. This helps to ensure that the owner is not able to dispose of the property with the benefit of the improvements made by the Council.

The Council may then decide to exercise its power of sale conferred by the land charge and enforce that the property is sold on the open market at auction, with the costs of the works in default secured by the charge being repaid from the sale proceeds, before any remaining equity is provided to the original owner. It is the same power that a bank or building society uses to sell a house when the owner has defaulted on the mortgage payments.

10. Publicity of Offences

10.1. Rogue Landlord Database

The Database of Rogue Landlords and Property Agents, established by the Housing and Planning Act 2016, provides a national record of landlords and property management agents who have received a Banning Order, or who have been convicted of certain other offences.

Local authorities in England are under a mandatory duty to make an entry on the database when it has obtained a banning order against a landlord or agent.

Local authorities in England also have the discretionary power to make an entry in the database in respect of a person where either:

the person has been convicted of a banning order offence, and the offence was committed as a time the person was a residential landlord or a property agent; or

the person has, at least twice within a period of 12 months, received a financial penalty in respect of a banning order offence, committed at a time when the person was a residential landlord or a property agent, and no financial penalty considered is still able to be appealed or has a final appeal decision still outstanding.

Government guidance states that the more comprehensive the database is, the more useful it will be, but does also stipulate that in deciding whether to use this discretionary power of entry, local authorities ought to consider the following:

- The severity of the offence – The greater the seriousness of the offence, the stronger the justification for entry.
- Mitigating factors – For example personal issues of the landlord or agent which would discourage entry on the register, such as health problems or a recent bereavement.
- Culpability and serial offending – Where there is a clear history of offences or non-compliance, the stronger the justification for making an entry.
- Deterrence of the offender from repeating the offence – Knowing that they risk being included on the database if the local authority actively exercises its discretionary powers of entry may deter some landlords from repeat offending, as they will be unable to simply move from one local housing authority to another and repeat the same offences as the information will be available to other local housing authorities.
- Deterrence of others from committing similar offences – Knowing that they risk being included on the database if the local authority actively exercises its discretionary powers of entry may deter some landlords from committing banning order offences in the first instance.

Before a local authority may make a discretionary entry, it must give the landlord or agent at least 21 days' notice advising that it has decided to place them on the database, and the notice must be provided within 6 months of the conviction or receipt of the second civil penalty.

When placing an entry onto the database, the local authority must record the following and take reasonable steps to keep the information up to date.

The following information must be recorded where a landlord or agent is placed on the database:

- Full name and address of landlord or agent (or registered address for a company).
- Addresses of all properties owned, let, or managed by the landlord or agent.
- National Insurance number and date of birth of the landlord or agent (unless a company).
- Length of the ban.
- Date for removal from the database.
- Description of each Banning Order offence.
- Description of each banned activity (when applicable).
- Local authority making the entry.

A landlord or agent remains on the database for the period a Banning Order is in effect, or for at least two years for a discretionary entry.

When exercising these powers in relation to entries in the Database, Wigan Council will follow the provisions of both legislation and applicable Government guidance.

10.2. Other Court Convictions

Verdicts and sentences in criminal cases are made in open court and are usually a matter of public record. Evidence suggests that the public want to know about local court cases and judgements.

The Council may publish the outcome of criminal cases and basic personal information about the offender, and this will always be in accordance with guidance issued by the Criminal Justice System (Publishing Sentencing Outcome, CJS, 2011).

The reasons are to:

- Reassure the public that offences are dealt with;
- Increase trust and confidence in the criminal justice system;
- Improve the effectiveness of the criminal justice system;
- Discourage offending or re-offending.

Providing this information to the public is a legitimate way of engaging communities and making criminal justice more transparent and accountable, whilst also providing a deterrence effect for potential offenders.

11. Charging for Enforcement Action

The Housing Act 2004 allows us to charge for taking enforcement action, where enforcement action involves the service of statutory notices and orders notices.

In prosecution cases the Council will seek to recover the costs incurred in taking a prosecution case, which include administrative costs incurred for preparing the prosecution file; attendance at court and Legal costs for preparing and presenting the case.

In cases where a property has been let illegally, or where there has been a breach of legal requirements, the Council will consider applying to the First Tier Tribunal Service to recover rent from a landlord through a Rent Repayment Order. It will also give advice to tenants on how they may recover rents through applying to the Tribunal Service in these circumstances.

Where there is substantial financial gain for a landlord or owner through non-compliance with legislative requirements in the private rented sector, the Council will consider taking action to confiscate or recover monies gained through illegal activities under the Proceeds of Crime Act 2002.

See Appendix A for detailed information surrounding Civil Penalties.

12. Information and Data Management

In operating this Policy, the Council will collect and hold information, including personal data, such as case files and incident reports, containing personal information (names, addresses, contact details, etc), and timelines of events.

In some cases, the Council will also collect and hold copies of photos, video recordings, text/online messages, emails, tenancy agreements, etc., to use as an evidence base for any enforcement action taken.

Records will normally be held in electronic format, but may, on occasion, be held in hard copy.

The Council holds personal data in accordance with the General Data Protection Regulation (GDPR).

The Council will hold personal data as set out in the [Data Privacy Primary Notice](#) and [Private Sector Housing Privacy Notice](#).

The Council will retain information in line with the relevant Retention Schedule for Private Sector Housing.

13. Reviewing the Policy

The policy will be reviewed on a three-yearly basis, or as and when any significant changes are made to legislation or Council strategy which would affect the scope, objectives, functionality, or efficacy, of this policy as directed by the Council's Senior Management team. A review effected on the latter basis of a change in legislation or Council strategy.

14. Compliments and Complaints

If you are unhappy that the Council has taken enforcement action (for example a Notice has been served on you or work in default has been undertaken), we suggest that you first discuss the matter with the officer assigned to your case to aim to resolve the matter.

Officers of the Council will provide an effective and courteous service to landlords and others against whom enforcement action may be taken. Any complaints regarding the behaviour of staff will be dealt with according to Wigan Councils complaint procedure. If you feel that we have failed to act or treat you in accordance with the provisions outlined in this policy, then please contact us.

Should you fail to reach a resolution, you do have a right of appeal to the First-Tier Tribunal (Property Chamber), depending on the type of Notice you have received. Information concerning the relevant appeal process will be included on any legal Notice you are served with.

As required by the Regulators Code, the authority has a Compliments and Complaints Procedure which allows all service users to give a compliment, give feedback or make a formal complaint. This can be accessed through the Council's website or by telephoning the contact centre.

15. Accessible Formats

For copies of this policy in alternative or accessible formats, please contact the email address pshadvice@wigan.gov.uk, or call on **01942 489204**.

16. Further Information

For further information or questions regarding this policy, please contact us using the following details:

- Email: pshousingstandards@wigan.gov.uk
- Telephone: 01942 489204.
- Address:

**Housing Strategy, Regulation & Improvement
Wigan Council
Places Directorate
PO Box 100
Wigan
WN1 3DS**

Appendix A - Civil Penalties

Appendix A - Civil Penalties under the Housing and Planning Act 2016 and The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

In this policy, the term 'landlord' should be read as including letting agents, managing agents, licensors, property owners, directors of corporate landlords and any other person involved in the letting or management of privately rented accommodation.

In this policy, the terms 'House of Multiple Occupation' or 'HMO' are defined by the Housing Act 2004.

Section 126 and Schedule 9 of the Housing and Planning Act 2016 provide local authorities with the power, through the insertion of section 249A Housing Act 2004, to impose a civil penalty as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice [section 30]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 [section 72]
- Offences in relation to the Selective Licensing of 'houses' under Part 3 [section 95]
- Failure to comply with an Overcrowding Notice [section 139]
- Failure to comply with a management regulation in respect of an HMO [section 234]

Regulation 11 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 provides local authorities with the power to impose a civil penalty in respect of breaches of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

In addition, section 23 of the Housing and Planning Act 2016 provides that a civil penalty may be imposed in respect of a breach of a Banning Order.

The Council has the power to impose a civil penalty of up to a maximum of £30,000 for each separate offence. If multiple offenders have committed the same offence at the same property, a separate civil penalty can, and usually will, be imposed on each offender. In each case, the level of civil penalty imposed on each offender will be in line with this policy.

This guidance outlines the Council's policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an alternative to prosecution proceedings.

The Council considers the need for transparency and consistency in the discharge of its functions under the Housing Act 2004 to be of primary importance. The general objective of this policy is, therefore, to promote both transparency and consistency in the imposition of financial penalties under the 2004 Act so that, for example, those managing and having control of rented properties in the Council know how the Council will generally penalise relevant offences and are assured that, generally, like cases will be penalised similarly, and different cases penalised differently. The further objectives of using financial penalties in particular as a means of enforcing the above offences are explained below.

Statutory Guidance

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016 entitled "Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities". The Council has regard to this guidance in the exercise of their functions in respect of civil penalties.

Paragraph 3.5 of the statutory guidance states that 'The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending'. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

- a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

- d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f) **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

The factors detailed in the statutory guidance and policy aims will be considered by the Council when deciding where, within the Civil Penalties matrix below, a particular offence and penalty fall.

Other Policy Aims

The Council is mindful that despite its best efforts, many landlords may operate unlawfully for a significant period of time without detection, and only a proportion of landlords committing relevant offences will be discovered. The Council is, therefore, mindful that when deciding to impose a Civil Penalty, it should create an environment where it is clear to the offender and others that operating unlawfully as a landlord will be financially disadvantageous when compared to operating lawfully.

The Council intends to create an environment where landlords engage with the Council's requests and demands fulsomely, openly and honestly. This helps create a level playing field which supports the aims of transparency and consistency. No landlord should be able to financially benefit from withholding information the Council deems relevant that is, or should be, in their control to disclose. It is expected that fulsome and complete supporting evidence is provided to support any Written Representations received in response to a Notice of Intent.

Civil Penalties Matrix

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which is to be read in conjunction with the associated guidance. The matrix is intended to provide indicative 'starting level' under the various offence categories, with the final level of the civil penalty adjusted in each case, taking into account aggravating and mitigating factors the Council deems significant including, but not limited to, factors relating to the track record and culpability of the landlord and the actual or potential harm to the occupants.

In deciding what level of penalty to impose, officers will conduct the following four stage process. First, they will consider the seriousness of the relevant housing offence to identify a starting level of the penalty. Second, an assessment of the number of rental properties controlled or owned or managed by the landlord and/or their experience in the letting/management of property will be considered, which may have the effect of increasing or decreasing the penalty. Third, aggravating and mitigating factors that may relate to a number of factors including, but not limited to, culpability, track record and harm will be considered, which may have the effect of increasing or decreasing the penalty. Fourth, if any of the Discounts, as set out below, apply, the penalty will be decreased.

Once the seriousness of the relevant housing offence has been identified, the starting level of the penalty will be identified using the table below with the headings 'Seriousness of offence' and 'Starting level [£]'. Consideration of the number and type of rental properties controlled or owned or managed may adjust the penalty.

To reflect the seriousness of the offence(s) in question, the presence of one or more mitigating factors will rarely result in the penalty being decreased in excess of a total of £5000. In exceptional circumstances, officers may determine that the presence of one or more mitigating factors justify a decrease in the penalty in excess of £5000. The presence of numerous mitigating factors will not automatically be considered as exceptional circumstances.

The Council has not provided a list of mitigating factors in this policy because it acknowledges that there are myriad possible circumstances that might give rise to mitigation.

To ensure that any penalty imposed is proportionate to the offending behaviour the presence of one or more aggravating factors will rarely result in the penalty being increased in excess of a total of £5000. In exceptional circumstances, officers may determine that the presence of one or more aggravating factors justify an increase in the penalty in excess of £5000. The presence of numerous aggravating factors will not automatically be considered as exceptional circumstances.

The Council may, exceptionally, including for the reason given above, increase the penalty by greater than £5000 on account of aggravating factors or, again exceptionally, decrease it by greater than £5000 on account of mitigating factors. In order to meet the objectives of this policy, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty by greater than £5000 on account of aggravating or mitigating factors in exceptional circumstances only excluding any Discounts as set out below. The Council will consider on a case-by-case basis whether any such circumstances exist.

Seriousness of offence	Starting level [£]
Mild	2500
Moderate	7500
Serious	12500
Very Serious	17500
Severe	22500
Very Severe	27500

Offences where a civil penalty may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty

Failure to comply with an Improvement Notice - Section 30 of the Housing Act 2004

Maximum Court fine following prosecution that can be levied for failure to comply with an Improvement Notice - Unlimited

An Improvement Notice served under Part 1 Housing Act 2004 specifies repairs/improvements that the recipient should carry out in order to address one or more identified Category 1 and/or Category 2 hazards in a property. Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more Category 1 hazards present.

In some cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action. In such cases, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier[s] of the relevant dwelling.

The Council would view the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the tenant[s] of a dwelling to one or more significant hazards.

The seriousness of the offence is viewed by the Council as being a Severe matter, attracting a financial penalty with a starting level of £22500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £22500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £27500.

Aggravating features/factors specific to non-compliance with an Improvement Notice

- The nature and extent of hazards that are present. Multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the occupant[s] in the property or their guests would justify an increase in the level of the civil penalty

Generic aggravating features/factors

The Council will have regard to general factors in determining the final level of the civil penalty including, but not limited to:

- A previous history of non-compliance would justify an increased civil penalty. Non-exhaustive examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], receipt of financial penalties, rent repayment orders, works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- A failure to cooperate with a Council investigation. Non-exhaustive examples of failure to cooperate would include failing to comply with a s.16 Local Government (Miscellaneous Provisions) Act 1976 notice, failing to comply with a s.235 Housing Act 2004 notice, failing to provide a substantive response to a letter of alleged offence.
- Deliberate intent when committing the offence. Non-exhaustive examples of deliberate intent would include knowledge that the offence was occurring, committing the offence after relevant correspondence was sent by the Council.
- The number of residents placed at risk
- Offending over an extended period of time i.e. 6 months or longer

- Whether any vulnerable residents were in occupation at the time of the offence. Non-exhaustive examples of vulnerable residents include young adults and children, persons vulnerable by virtue of age, persons vulnerable by virtue of disability or sensory impairment, persons with a drug or alcohol addiction, victims of domestic abuse, children in care or otherwise vulnerable by virtue of age, people with complex health conditions, people who do not speak English as their first language, victims of trafficking or sexual exploitation, refugees, asylum seekers

Failure to License offences

Maximum Court fine following prosecution that can be levied for failure to license an HMO or Part 3 House – Unlimited

Failure to license a Mandatory ‘HMO’ – Section 72(1) of the Housing Act 2004

Under Part 2 Housing Act 2004, most higher risk HMOs occupied by 5 or more persons forming 2 or more households are required to hold a property licence issued by the local authority. HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, local authorities ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions.

The Council would view the offence of failing to license an HMO as a significant failing; Licensing was introduced by the Government in order to regulate management, conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

This seriousness of the offence is viewed by the Council as being a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council’s policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

Aggravating features/factors specific to failure to licence offences

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Failure to Comply with an Overcrowding Notice – Section 139 of the Housing Act 2004

Maximum Court fine following prosecution that can be levied for failure to comply with an Overcrowding Notice – Unlimited

Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that is not required to be licensed under Part 2 Housing Act 2004. The notice specifies, on a room-by-room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose.

The Council would view the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenant[s] of an HMO to unacceptably cramped living conditions.

The seriousness of the offence is viewed by the Council as being a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

Aggravating features/factors specific to non-compliance with an Overcrowding Notice

- The level of overcrowding present – breaches that related to over-occupation of multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Failure to Comply with a Banning Order – Section 21 of the Housing And Planning Act 2016

Maximum Court fine that can be levied for failure to comply with a Banning Order following prosecution – Unlimited. In addition, the Court can also impose a prison sentence for up to 51 weeks.

The Housing and Planning Act 2016 includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities:

- Letting housing
- Engaging in letting agency work
- Engaging in property management work

Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that the Council was satisfied that the offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings. Where it was determined that a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level of £30,000 to reflect the severity of the offence.

Failure to Comply with The Management of Houses in Multiple Occupation [England] Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

Maximum Court fine following prosecution that can be levied for failure to comply with each individual regulation – unlimited

The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers [Regulation 3]
- Taking safety measures, including fire safety measures [Regulation 4]
- Maintaining the water supply and drainage [Regulation 5]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 6]
- Maintaining common parts [Regulation 7]
- Maintaining living accommodation [Regulation 8]
- Providing sufficient waste disposal facilities [Regulation 9]

The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 impose duties on the persons managing HMOs as defined by Section 257 Housing Act 2004 in respect of:

- Providing information to occupiers [regulation 4]
- Taking safety measures, including fire safety measures [regulation 5]
- Maintaining the water supply and drainage [regulation 6]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [regulation 7]
- Maintaining common parts [regulation 8]
- Maintaining living accommodation [regulation 9]
- Providing sufficient waste disposal facilities [regulation 10]

It is important that the manager of an HMO complies with all regulations, but the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others.

Failure to comply with the duty of manager to provide information to occupier

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to provide information to occupier as a Mild matter, attracting a financial penalty with a starting level of £2500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £2000, attracting a civil penalty of £500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £2000, attracting a civil penalty of £4500.

Aggravating features/factors specific to Management Regulation breach offences

- The number and/or nature and/or extent of the management regulation breach(es) and/or the deficiencies within each regulation

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Duty of manager to take safety measures

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to take safety measures as a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Duty of manager to maintain water supply and drainage

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the water supply and drainage as a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Duty of manager to supply and maintain gas and electricity

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the gas and electricity supply as a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Duty of manager to maintain common parts, fixtures, fittings and appliances

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the common parts, fixture, fittings and appliances as a Moderate matter, attracting a financial penalty with a starting level of £7500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Duty of manager to maintain living accommodation

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the living accommodation as a Moderate matter, attracting a financial penalty with a starting level of £7500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Duty to provide waste disposal facilities

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to provide waste disposal facilities as a Moderate matter, attracting a financial penalty with a starting level of £7500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Breach of licence conditions – Section 72(3) Housing Act 2004

Maximum Court fine following prosecution that can be levied for failure to comply with a licence condition - unlimited

All granted HMO licences impose a set of conditions on the licence holder. These conditions impose a variety of obligations relating to the letting, management and condition of the rented property.

It is important that the manager of a licensed property complies with all imposed conditions, but the Council recognises that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others.

Failure to comply with licence conditions related to:

- Signage or the provision of information for tenants
- Provision of written terms of occupancy for tenants
- Procedures regarding complaints
- Procedures regarding vetting of incoming tenants
- Compliance with deposit protection legislation
- The recording and provision of information regarding rent payments
- Procedures relating to rent collection
- The provision of information regarding occupancy of the property
- The provision of information regarding change of managers or licence holder details
- The provision of information related to changes in the property
- Requirements relating to the sale of the property
- Attending training courses
- Requirements to hold insurance
- Requirements regarding inventories
- The provision of insurance documentation
- The carrying out of Right-To-Rent checks, including the retention and provision of evidence regarding these checks
- The safety and security of roofs, balconies, doors and windows

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Mild matter, attracting a financial penalty with a starting level of £2500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £2000, attracting a civil penalty of £500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £2000, attracting a civil penalty of £4500.

Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Failure to comply with licence conditions related to:

- Procedures and actions regarding Inspections
- Procedures regarding Repair issues
- Maintenance and use of common parts (including gardens, outbuildings and property exterior) and living areas
- Safeguarding occupiers and minimising disruption during works
- The provision of information regarding alterations and construction works
- Procedures regarding emergency issues
- Waste and waste receptacles, pests, minor repairs, alterations or decoration
- Obtaining consent for appropriate works from Building Control at the Council
- Giving written notice prior to entry
- Allowing access for inspections
- The compliance of furnishings or furniture with fire safety regulations
- The holding of and provision of keys

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Moderate matter, attracting a financial penalty with a starting level of £7500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.

Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Failure to comply with licence conditions related to:

- The provision of documentation regarding energy performance certificates, fire detection and prevention, emergency lighting, carbon monoxide detection, fire risk assessments, gas installations, electric installations and appliances
- Notification of legal proceedings, contraventions and other relevant information that may affect a fit and proper person status
- Procedures and actions regarding ASB
- Ensuring the water supply and drainage system is uninterrupted and maintained

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.

Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Failure to comply with licence conditions related to:

- Minimum floor areas
- Occupancy rates
- Occupancy of rooms that are not to be used as sleeping accommodation
- Limits on number of households allowed to occupy the property or part of the property
- The supply of gas or electricity

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Failure to comply with licence conditions related to:

- The condition or existence of smoke alarms, carbon monoxide alarms, emergency lighting, gas installations, electric installations and appliances, fire detection or other fire safety features or requirements
- The prevention including provision of safe means of escape

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Severe matter, attracting a financial penalty with a starting level of £22500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £22500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £27500.

Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Failure to Comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 impose duties on private landlords in relation to electrical installations. Regulation 3 is detailed below:

3. Duties of private landlords in relation to electrical installations

- (1) A private landlord who grants or intends to grant a specified tenancy must—
 - (a) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;
 - (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and
 - (c) ensure the first inspection and testing is carried out—
 - (i) before the tenancy commences in relation to a new specified tenancy; or
 - (ii) by 1st April 2021 in relation to an existing specified tenancy.
- (2) For the purposes of sub-paragraph (1)(b) "at regular intervals" means—
 - (a) at intervals of no more than 5 years; or
 - (b) where the most recent report under sub-paragraph (3)(a) requires such inspection and testing to be at intervals of less than 5 years, at the intervals specified in that report.
- (3) Following the inspection and testing required under sub-paragraphs (1)(b) and (c) a private landlord must—
 - (a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;
 - (b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;
 - (c) supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;
 - (d) retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and

- (e) supply a copy of the most recent report to—
 - (i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and
 - (ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.
- (4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within—
 - (a) 28 days; or
 - (b) the period specified in the report if less than 28 days, starting with the date of the inspection and testing.
- (5) Where paragraph (4) applies, a private landlord must—
 - (a) obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that—
 - (i) the electrical safety standards are met; or
 - (ii) further investigative or remedial work is required;
 - (b) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and
 - (c) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.
- (6) Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5) in respect of that further investigative or remedial work.
- (7) For the purposes of sub-paragraph (3)(e)(ii) a person is a prospective tenant in relation to

residential premises if that person—

- (a) requests any information about the premises from the prospective landlord for the purpose of deciding whether to rent those premises;
- (b) makes a request to view the premises for the purpose of deciding whether to rent those premises; or
- (c) makes an offer, whether oral or written, to rent those premises.

It is important that a private landlord complies with all aspects of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, however, the Council recognises that a failure to comply with certain aspects of Regulation 3 is likely to have a much bigger impact on the safety and comfort of residents than others.

Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 sections (3)(b), 3(d), 3(e)

The Council would view the seriousness of the offence of failing to comply with (3)(b), 3(d) or 3(e) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a Mild matter, attracting a financial penalty with a starting level of £2500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £2000, attracting a civil penalty of £500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £2000, attracting a civil penalty of £4500.

Aggravating features/factors specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 sections (1)(a), (1)(b), (1)(c), (3)(a), (3)(c), (5)(b), (5)(c)

The Council would view the seriousness of the offence of failing to comply with (1)(a), (1)(b), (1)(c), (3)(a), (3)(c), (5)(b) or (5)(c) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.

Aggravating features/factors specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 sections (4), (5a), (6)

The Council would view the seriousness of the offence of failing to comply with (4), (5a) or (6) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

Aggravating features/factors specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Process for imposing a civil penalty and the right to make representations

Before imposing a financial penalty on a person, the Council will give the person a Notice of Intent.

A person who is given a Notice of Intent may make written representations to the Council about the proposal to impose a financial penalty. Any representations must be made within a 28-day period, this period starting the day after the date on which the Notice of Intent was given. As the burden lies with the recipient of any such notice to explain why, exceptionally, the Council should, or should not, depart from the Civil Penalties Matrix and guidance above, the Council will expect the recipient of a Notice of Intent to explain and provide fulsome and cogent evidence to support the existence of any such circumstances when they make representations in response to the notice.

In the event of two or more persons receiving separate Notices of Intent for the same matter, it should be noted that acceptance/payment of a civil penalty by one person will not negate the Council's intention to impose a civil penalty on the second or further persons. Each person served with the Notice of Intent is considered individually liable to pay the civil penalty notified to them. It is therefore important that any recipient of a Notice of Intent takes the opportunity to make representations should they consider for any reason a civil penalty should not be individually imposed upon them.

After the end of the period for representations the Council will:

- (a) Decide whether to impose a financial penalty on the person, and
- (b) If it decides to impose a financial penalty, decide the amount of the penalty

In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any written representations received in the appropriate time period and will also consider the totality principle.

Furthermore, an offender's compliance with the identified breach during the representation period would not, in itself, be reason for the Council to determine that the imposition of a financial penalty was inappropriate. However, compliance at that stage may be relevant with respect to any mitigating factors that could decrease the amount of any imposed financial penalty.

If, following the receipt of written representations and/or the expiry of the time period to make written representations, the Council decides to impose a financial penalty on the person, it will give the person a Final Notice imposing that penalty.

The Final Notice will set out and summarise:

- a) The amount of the financial penalty,
- b) The reasons for imposing the penalty,
- c) Information about how to pay the penalty,
- d) The period for payment of the penalty,
- e) Information about rights of appeal, and
- f) The consequences of failure to comply with the notice

Discounts

The Council will automatically apply the following discounted rates to any imposed financial penalties in the following circumstances:

- A discount of 15% of the original calculated financial penalty will be deducted from the penalty imposed in the Final Notice should the penalty be paid within a specified time period (normally 28 days).

Illustrative example

The landlord of a Mandatory HMO property fails to obtain a licence. They only operate two HMO properties and there are no other relevant factors or aggravating features. The offence is regarded as a Very Serious matter. Upon receipt of the 'Notice of Intent' to impose a £17500 financial penalty. Written representations are made to the Council.

On account of the written representations received by the landlord, the council imposes a financial penalty of £16000. In the event the landlord pays within the specified period a 15% discount is given so that the landlord makes a discounted payment of £13600.

Appendix B - Minimum Energy Efficiency Standards (MEES)

Appendix B - Statement of principles to determine the amount of a penalty charge for a breach of minimum energy efficiency standards (MEES) with respect to domestic privately rented property

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (“the Regulations”) make it unlawful to rent out a domestic property if it has an EPC (Energy Performance Certificate) rating of F or G (unless a valid exemption has been registered on the PRS Exemptions register).

The Regulations make it unlawful to fail to comply with a compliance notice served by the Council.

The Regulations cover all relevant properties, even where there has been no change of tenancy.

The Regulations were introduced to improve the energy efficiency of housing in the private rented sector and to reduce greenhouse gas emissions and tackle climate change. They should help make tenants’ homes more thermally efficient.

An energy performance certificate (EPC) gives the property an energy efficiency rating – A rated properties are the most energy efficient and G rated are the least efficient. It’s valid for 10 years and must be provided by the owner of a property, when it is rented or sold.

If you are a landlord and you fail to provide an EPC at the start of a tenancy, you will be in breach of the Regulations.

An EPC contains information about the type of heating system and typical energy costs. It also gives recommendations about how the energy use could be reduced, lowering running costs. You can find the recommended energy efficiency improvements on the current EPC.

If you're a private landlord, you must either:

- ensure your rented properties have an EPC with a minimum 'E' rating
- register a valid PRS exemption on the PRS exemptions register

Failure to do either of these is a breach of the Regulations.

The Council investigates any potential breaches of the regulations. If the Council is satisfied that you are or have at any time in the 18 months preceding the date of service of the penalty notice, breached the Regulations, you may be subject to a penalty notice imposing a financial penalty. The Council may also impose a publication penalty.

The "publication penalty" means publication, for a minimum period of 12 months, or such longer period as the Council may decide, on the PRS Exemptions Register of such of the following information in relation to a penalty notice as the Council decides:

- Where the landlord is not an individual, the landlord's name
- Details of the breach of these Regulations in respect of which the penalty notice has been issued
- The address of the property in relation to which the breach has occurred, and
- The amount of any financial penalty imposed.

The Council will impose the following financial penalties:

(a) letting a property with an F or G rating for less than 3 months: £2,000

(b) letting a property with an F or G rating for more than 3 months: £4,000

(c) registering false or misleading information on the PRS exemptions register: £1,000

(d) failing to provide information to the Council demanded by a compliance notice: £2,000

The Council may not impose a financial penalty under both subsections (a) and (b) above in relation to the same breach of the Regulations. But they may impose a financial penalty under either paragraph (a) or paragraph (b), together with financial penalties under paragraphs (c) and (d), in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000.

Appendix C - Smoke and Carbon Monoxide Alarm

Appendix C - Statement of principles to determine the amount of a penalty charge under Part 4 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 (“the Regulations”)

Section 13 of the Regulations requires local housing authorities to prepare and publish a statement of principles which they propose to follow in determining the amount of a penalty charge.

The Regulations introduced legal requirements on most private sector landlords to:

1. Equip a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation.
2. During any period when the premises were occupied under the tenancy, to ensure that a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation, and which contains fixed combustion appliance other than a gas cooker.
3. Carry out checks by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.
4. Where, following a report made on or after 1st October 2022 by a tenant or by their nominated representative to the landlord, a prescribed alarm is found not to be in proper working order, the alarm is repaired or replaced.

For the purposes of the legislation, living accommodation includes a bathroom or lavatory.

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of the Regulations.

If the landlord then fails to take the remedial action specified in the notice within the specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of the Regulations. Failure to comply with each remedial notice can lead to a fine of up to £5,000. Fines will be applied per breach, rather than per landlord or property.

The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice if they can demonstrate they have taken all reasonable steps to comply. Where there is evidence, including written correspondence, of repeated and consistent efforts to obtain access to the property, with access repeatedly being prevented by the occupant(s) of the property, a landlord will not be considered to be in breach of their duty to comply with the remedial notice. A landlord will be expected to have:

- Communicated the risk of harm that the lack of functioning alarms posed to all occupants in writing on multiple occasions
- Requested access to comply with the remedial notice on a regular basis of no longer than every seven days in writing

In considering the imposition of a penalty, the Council may look at the evidence concerning the breach of the requirement of the notice. A non-exhaustive list of methods that may be used to obtain relevant evidence includes, but is not limited to:

- Evidence obtained from a property inspection
- Evidence provided by the tenant or agent
- Evidence provided by the landlord demonstrating compliance with the Regulations by supplying dated photographs of alarms, together with installation records

Landlords need to take steps to demonstrate that they have met the testing requirements at the start of the tenancy requirements. A non-exhaustive list of methods that may be used to evidence compliance with these testing requirements includes, but is not limited to:

- Tenants signing an inventory form which states that they observed the alarms being tested and confirming that the alarms were in working order at the start of the tenancy

Where a landlord is in breach, the local housing authority may serve a remedial notice. Failure to comply with each remedial notice can lead to a fine of up to £5,000. Fines will be applied per breach, rather than per landlord or property

When determining the amount of the penalty charge, regard will be had to whether this is a first breach under the Regulations.

Determining the amount of the penalty charge for a first breach

The minimum amount of a penalty charge for a first breach of the Regulations will be £2500.

The starting level of a penalty charge for a first breach of the Regulations will be £3000. The penalty charge amount will then be varied depending on aggravating and mitigating factors.

Aggravating factors include, but are not limited to:

- The number of alarms not working or missing (the Regulations state there should be one per storey)
- Other fire safety concerns/defects in the property which increase the risk posed to the occupants
- The length of time the offence is believed to have been on-going
- The frequency of complaints by the occupiers to the landlord about the non-working or missing alarms
- The costs of any remedial work the Council have carried out in response to the breach
- Whether the property is let as an HMO (which increases the overall risk)
- The number of occupants living in the property
- Presence of vulnerable occupiers such as elderly, children or disabled people
- Any history of previous enforcement or non-compliance of the landlord
- Attempts to obstruct the investigation

Mitigating factors include, but are not limited to:

- The property being small and low-risk (for example a one-bedroom ground floor flat with a large number of fire escapes including large windows)
- A single occupant living in the property
- Evidence that all required alarms were checked and in working order at the start of the tenancy
- Written evidence that some efforts to gain access and comply with the remedial notice were made and access was prevented by the occupant

Determining the amount of the penalty charge for a subsequent breach

The penalty for subsequent breaches by the same landlord will be £5000.